

- 6.1.3 OSC Notice - Proposed Repeal and Replacement of Multilateral Instrument 45-102 Resale of Securities, Forms 45-102F1, F2 and F3 and Companion Policy 45-102CP Resale of Securities and Proposed Amendments to National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR) and Proposed Amendments to National Instrument 62-101 Control Block Distribution Issues and Proposed Amendments to Ontario Securities Commission Rule 45-501 Exempt Distributions

ONTARIO SECURITIES COMMISSION
NOTICE

PROPOSED REPEAL AND REPLACEMENT OF
MULTILATERAL INSTRUMENT 45-102 *RESALE OF SECURITIES*,
FORMS 45-102F1, F2 AND F3 AND
COMPANION POLICY 45-102CP *RESALE OF SECURITIES*
AND
PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 13-101
SYSTEM FOR ELECTRONIC DOCUMENT ANALYSIS AND RETRIEVAL (SEDAR)
AND
PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 62-101
CONTROL BLOCK DISTRIBUTION ISSUES
AND
PROPOSED AMENDMENTS TO ONTARIO SECURITIES COMMISSION RULE 45-501
EXEMPT DISTRIBUTIONS

January 31, 2003

REQUEST FOR PUBLIC COMMENT

The Commission and certain other members of the Canadian Securities Administrators (the "CSA") are publishing for a 90-day comment period the following documents:

- Multilateral Instrument 45-102 *Resale of Securities* ("MI 45-102");
- Form 45-102F1 *Notice of Intention to Distribute Securities* under Section 2.8 of MI 45-102 *Resale of Securities* ("Form 1")
- Companion Policy 45-102CP (the "Companion Policy")

collectively, "Proposed MI 45-102".

The text of Proposed MI 45-102 is being published concurrently with this Notice and can be obtained on websites of CSA members, including the following:

- www.albertasecurities.com
- www.bcsc.bc.ca
- www.msc.gov.mb.ca
- www.osc.gov.on.ca
- www.ssc.gov.sk.ca

Proposed MI 45-102 is intended to replace the current resale rule, forms and companion policy (collectively, the "Current Resale Rule") that came into effect in all CSA jurisdictions, except Québec, on November 30, 2001. We are also proposing to make consequential amendments to National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR), National Instrument 62-101 *Control Block Distribution Issues* and Ontario Securities Commission Rule 45-501 *Exempt Distributions*. We request comments by **May 2, 2003**.

BACKGROUND

Current Resale Requirements

The Current Resale Rule harmonized certain provincial and territorial resale restrictions imposed on first trades of securities initially distributed under an exemption from the prospectus requirement. The Current Resale Rule also harmonized the regulation of distributions of securities from a control block and provides a prospectus exemption to permit the resale of securities of a non-reporting issuer with a minimal connection to Canada over a foreign exchange or market.

The Current Resale Rule imposes resale restrictions on

- the first trade of securities distributed under a prospectus exemption listed in Appendix D for which the issuer is required to have been a reporting issuer for a specified period of time and the seller is required to have held the securities for a specified period of time (a restricted period);
- the first trade of securities distributed under a prospectus exemption listed in Appendix E for which the issuer of the securities is required to have been a reporting issuer for a specified period of time (a seasoning period); and
- trades of securities from the holdings of a control person (control distributions).

Securities distributed under an exemption listed in Appendix D or E or as a control distribution are subject to restricted periods or seasoning periods of either four or twelve months under the Current Resale Rule, depending on whether the issuer of the securities is a qualifying issuer at the distribution date. If an issuer is not a reporting issuer in any jurisdiction, the securities of the issuer acquired by the purchaser will be subject to an indefinite hold period.

Impact of Continuous Disclosure Harmonization Initiatives on the Current Resale Rule

With the introduction of harmonized, enhanced continuous disclosure rules applicable to all reporting issuers¹, the CSA proposes to make substantive changes to the Current Resale Rule by eliminating the distinction between qualifying issuers and other reporting issuers. The adoption of harmonized continuous disclosure rules for all reporting issuers should lead to better disclosure and in turn eliminate the need to distinguish between qualifying and non-qualifying issuers and to require a current AIF. Better disclosure should enhance the ability of investors to make informed investment decisions and foster confidence in the Canadian capital markets.

PURPOSE AND SUBSTANCE OF PROPOSED MI 45-102

If adopted, Proposed MI 45-102 will further harmonize certain provincial and territorial resale restrictions imposed on first trades of securities initially distributed under an exemption from the prospectus requirement and control distributions. Proposed MI 45-102 also provides a prospectus exemption to permit the resale of securities of a non-reporting issuer with a minimal connection to Canada over a foreign exchange or market. Lastly, it provides an exemption from the seasoning requirements in sections 2.5, 2.6 and 2.8 if the issuer of securities becomes a reporting issuer after the distribution date by filing and obtaining a receipt for a prospectus in a jurisdiction listed in Appendix B.

Proposed MI 45-102 imposes resale restrictions on

- the first trade of securities distributed under a prospectus exemption listed in Appendix D for which the issuer is required to have been a reporting issuer for at least four months immediately preceding the trade and the seller is required to have held the securities for at least four months from the distribution date (the restricted period);
- the first trade of securities distributed under a prospectus exemption listed in Appendix E for which the issuer of the securities is required to have been a reporting issuer for at least four months immediately preceding the trade (the seasoning period); and
- trades of securities from the holdings of a control person (control distributions).

With the exception of the resale restrictions for control distributions, the resale restrictions in Proposed MI 45-102 do not apply in Manitoba, New Brunswick, or the Yukon Territory as these jurisdictions do not impose resale restrictions on securities distributed under a prospectus exemption. Prince Edward Island will impose resale restrictions on the implementation of Proposed MI 45-

¹ See proposed NI 51-102 *Continuous Disclosure Requirements* (applicable to reporting issuers other than investment funds), proposed NI 71-102 *Continuous Disclosure and Other Exemptive Relief for Foreign Issuers* (applicable to foreign reporting issuers) and proposed NI 81-106 *Investment Fund Continuous Disclosure* (applicable to investment fund reporting issuers).

102. If an issuer is not a reporting issuer in any jurisdiction, the securities of the issuer acquired by the purchaser will be subject to an indefinite hold period.

SUMMARY OF CHANGES TO THE CURRENT RESALE RULE

The Current Resale Rule continues to be in force in all jurisdictions, except Québec, in accordance with section 2.1 of the Current Resale Rule. If Proposed MI 45-102 is adopted, it will replace the Current Resale Rule. The most significant changes to the Current Resale Rule are summarized in the following outline:

- eliminating the concept of qualifying issuer,
- removing the current AIF requirement as all reporting issuers, except small business issuers, will be subject to a mandatory AIF requirement under the new harmonized continuous disclosure requirements,
- eliminating the concept of a qualified market,
- amending sections 2.5, 2.6 and 2.8 to provide for a four month restricted period, a four month seasoning period, or both, for all reporting issuers and revising the wording of the legend in section 2.5,
- repealing subsection 2.6(5) and Appendix F relating to employee trades,
- repealing section 2.7 dealing with the filing of Forms 45-102F1 and 45-102F2,
- repealing Form 45-102F1 (notice of ceasing to be a private company or private issuer),
- repealing Form 45-102F2 (certificate of qualifying issuer),
- amending and renumbering Form 45-102F3 as Form 45-102F1 to update and streamline the notice of intention to distribute securities required to be filed by a control person,
- adding language to the exemptions listed in Appendix D to clarify that (a) all underlying securities may be subject to hold periods and (b) the word "exemption" includes discretionary exemptions granted by a regulator, and
- adding a new exemption to permit the resale of securities without complying with the seasoning requirements in sections 2.5(2)1., 2.6(3)1. or 2.8(2)1. of MI 45-102 if the issuer of the securities becomes a reporting issuer after the distribution date by filing a prospectus in one of the jurisdictions listed in Appendix B to MI 45-102.

SUMMARY OF PROPOSED MI 45-102

Mandatory elements of Proposed MI 45-102 are set out in MI 45-102 and Form 1. Form 1 also contains instructions to guide users. The Companion Policy provides explanation and additional guidance on elements of Proposed MI 45-102.

MI 45-102

Part 1 of MI 45-102 identifies defined terms used in the proposed instrument. The number of defined terms has been significantly reduced by the proposed repeal of terms like AIF, approved rating, approved rating organization, CPC, CPC information circular, CPC instrument, current AIF, qualified market and qualifying issuer.

Part 2 of MI 45-102 deals with the application and scope of resale restrictions on first trades of securities acquired under private placement exemptions in securities legislation or applicable to control distributions.

Part 3 of MI 45-102 deals with the transition from the Current Resale Rule to MI 45-102. Section 3.1 provides for securities distributed between the effective date of the Current Resale Rule and its repeal that were subject to a restricted period and legending requirement under section 2.5(2) or (3) of the Current Resale Rule to continue to be subject to the legending requirement until the expiry of the restricted period.

Part 4 of MI 45-102 provides that exemptions from MI 45-102 may be granted by the securities regulatory authority or regulator (in Ontario, only by the regulator).

Part 5 of MI 45-102 deals with the coming into force of Proposed MI 45-102. Section 5.1 of MI 45-102 provides for the repeal of the Current Resale Rule while section 5.2 establishes the date MI 45-102 comes into force.

Form 45-102F1

Form 1 provides notice to the market of an intention to sell securities from a control block. The form has been renumbered and simplified to address privacy of personal information concerns.

The Companion Policy

The Companion Policy provides information relating to the manner in which the provisions of MI 45-102 are intended to be interpreted or applied by the securities regulatory authorities of the adopting jurisdictions.

RELATED AMENDMENTS

We intend to make consequential amendments to a number of national and multilateral instruments or local rules in conjunction with the implementation of Proposed MI 45-102. These consequential amendments will be published separately in some jurisdictions.

NI 13-101

We propose to amend National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR) in order to accommodate the electronic filing of Form 1 and the notice required under section 2.8(7)(b) of MI 45-102. We also plan to make revisions to the software and filer manual used under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR).

Proposed amendments to NI 13-101 are out in Appendix A to this Notice.

NI 62-101

We will amend National Instrument 62-101 *Control Block Distribution Issues* by repealing section 2.2 relating to pledgees and Appendix B and C. One of the purposes of NI 62-101 was to modify the application of hold periods imposed under securities legislation as they apply to pledgees disposing of securities that form part of a control block. These local resale provisions have been replaced in all jurisdictions, except Québec, by the harmonized resale restrictions in section 2.8 of MI 45-102. The repeal of section 2.2 and Appendix B and C will permit pledgees to look to one instrument for applicable resale restrictions.

Proposed amendments to NI 62-101 are out in Appendix B to this Notice.

OSC Rule 45-501

In Ontario, consequential amendments will be made locally to Ontario Securities Commission Rule 45-501 *Exempt Distributions*.

Proposed amendments to OSC Rule 45-501 are set out in Appendix C to this Notice.

COSTS AND BENEFITS

The CSA developed the Current Resale Rule to harmonize differing resale restrictions in local jurisdictions. Proposed MI 45-102 will further streamline the resale regime by

- providing for a four month restricted and seasoning period for all reporting issuers,
- eliminating the requirement to file a current AIF under MI 45-102,
- reducing filing requirements by eliminating the requirement to prepare and file current Forms 45-102F1 and 45-102F2, and
- exempting securities distributed prior to an initial public offering from the four month seasoning period that those securities would otherwise be subject to under section 2.6 of MI 45-102.

Issuers should see a decrease in their costs of compliance with MI 45-102 with the elimination of the requirement to have a current AIF and other qualifying issuer criteria because there will be no additional disclosure requirements imposed on issuers beyond those in the new harmonized continuous disclosure rules applicable to all reporting issuers.

REQUEST FOR COMMENT

We request your comments on MI 45-102, Form 1 and the Companion Policy as well as on the proposed amendments to NI 13-101 and NI 62-101 discussed above under the heading "Related Amendments".

In Ontario, we request your comments on the proposed amendments to OSC Rule 45-501 *Exempt Distributions* also discussed above under the heading "Related Amendments".

HOW TO PROVIDE YOUR COMMENTS

Please provide your comments by May 2, 2003 by addressing your submission to the securities regulatory authorities listed below:

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
Nova Scotia Securities Commission
Ontario Securities Commission
Prince Edward Island Securities Office
Saskatchewan Securities Commission

You do not need to deliver your comments to all of the CSA member commissions. Please deliver your comments to the address that follows, and they will be distributed to all other jurisdictions by CSA staff.

Marsha Manolescu
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Alberta Securities Commission
4th Floor, 300 - 5th Avenue S.W.
Calgary, Alberta T2P 3C4
Fax: (403) 297-6156
marsha.manolescu@seccom.ab.ca

Comments on proposed amendments to OSC Rule 45-501 *Exempt Distributions* should be delivered to the address below.

Ilana Singer
Legal Counsel, Corporate Finance Branch
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: (416) 593-3683
Phone: (416) 593-2388
isinger@osc.gov.on.ca

If you are not sending your comments by e-mail, please send a diskette containing your comments (in DOS or Windows format, preferably Word).

We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

QUESTIONS

Please refer your questions to any of:

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Request for Comments

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APPENDIX A

AMENDMENTS TO NATIONAL INSTRUMENT 13-101
System For Electronic Document Analysis and Retrieval (SEDAR)

PART 1 AMENDMENTS TO NATIONAL INSTRUMENT 13-101

1.1 Amendments - Appendix A to National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* is amended by

- (a) under *Other Issuers - Continuous Disclosure*,
 - (i) deleting item 15 Annual Information Form,
 - (ii) deleting item 16 Amended Annual Information Form (SHAIF System),
 - (iii) deleting item 17 Notice (SHAIF),
 - (iv) substituting the following items:
 - 15. Form 1 (Resale Rule)
 - 16. Notice (Resale Rule)

PART 2 EFFECTIVE DATE

2.1 Effective Date – This Amendment comes into force on •.

APPENDIX B

AMENDMENTS TO NATIONAL INSTRUMENT 62-101
Control Block Distribution Issues

PART 1 AMENDMENTS TO NATIONAL INSTRUMENT 62-101

1.1 Amendments - National Instrument 62-101 *Control Block Distribution Issues* is amended by

- (a) deleting section 2.2 Pledgees;
- (b) deleting Appendix B; and
- (c) deleting Appendix C.

PART 2 EFFECTIVE DATE

2.1 Effective Date – This Amendment comes into force on •.

**APPENDIX C
(ONTARIO ONLY)**

**AMENDMENTS TO ONTARIO SECURITIES COMMISSION RULE 45-501
*Exempt Distributions***

PART 1 AMENDMENTS TO ONTARIO SECURITIES COMMISSION RULE 45-501

1.1 Amendments – Ontario Securities Commission Rule 45-501 *Exempt Distributions* is amended by

- (a) deleting “Form 45-102F3” in sections 2.4(1)(d) and 2.1(2) and replacing it with “Form 45-102F1”;
- (b) deleting “conditions in subsection (2) or (3) of section 2.8 of MI 45-102” in sections 6.1, 7.5(3) and 8.4 and replacing it with “conditions in subsection (2) of section 2.8 of MI 45-102”; and
- (c) deleting “conditions in subsection (2) or (3) of section 2.5 of MI 45-102” in section 7.5(2) and replacing it with “conditions in subsection (2) of section 2.5 of MI 45-102”.

PART 2 EFFECTIVE DATE

2.1 Effective Date - This Amendment comes into force on •.